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Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

E. D. SHELLEDY, Petitioner

v.

EDWARD LORE, et al., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

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QUESTIONS PRESENTED

Whether standing doctrine may be utilized to deprive the federal government's grantee of title by allowing limitations period to run while the title was in the federal government.

Whether Utah may infringe upon the federal government's power to manage and dispose of its property by denying the federal government's grantee standing to establish his chain of title.

Whether a tax deed which is void for lack of jurisdiction over the property by the taxing authority may be the basis of good title by operation of a short statute of limitations.

LIST OF PARTIES

The parties to the proceedings below were the petitioner E.D. Shelledy and the respondents Edward Lore, Alan Parsons, Erin Parsons, Roy Hockin, Harry Deckered, Kent C. Bangerter, Lloyd V. McBride, David C. Kunz, and Susan S. Kunz, individuals, Merit Distributing, Inc., a Utah corporation, State Tax Commission of the State of Utah, and Salt Lake County.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

E. D. SHELLEDY, Petitioner

v.

EDWARD LORE, et al., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

The petitioner E.D. Shelledy respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Utah, entered in the above-entitled proceeding on April 14, 1992, and from which a timely Petition for Rehearing was denied on July 21, 1992.

OPINIONS BELOW

The opinion of the Utah Supreme Court is not yet reported in the Pacific Reporter, but was reported informally at 184 Utah Advance Reports 45 (April 21,

1992), and is reprinted in the Appendix hereto, p.A1, infra. The Order denying the timely petition for rehearing is reprinted in the Appendix hereto, p.C1, infra. The Order of the trial court of the Third District Court in and for Salt Lake County, State of Utah (Sawaya, District Judge) was not reported. It is reprinted in the Appendix hereto, p. B1, infra.

JURISDICTION

The judgment of the Supreme Court of the State of Utah was entered on April 14, 1992, affirming the decision of the lower court dated January 17, 1990. The Utah Supreme Court denied a timely petition for rehearing on July 21, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

STATUTES INVOLVED

Utah Code Ann. §78-12-5.2 provides in pertinent part:

Holder of tax title--Limitations of action or defense -- Proviso.

No action or defense for the recovery or possession of real property or to quiet title or determine the ownership thereof shall be commenced or interposed against the holder of a tax title after the expiration of four years from the date of the sale, conveyance or transfer of such tax title to any county, or directly to any other purchaser thereof at any public or private tax sale and after the expiration of one year from the date of this act.

Utah Code Ann. §78-12-5.3 provides in pertinent part:

Definitions of "tax title" and "action."

(1) the term "tax title" as used

in §78-12-5.1 and §59-2-1364, and the related amended §§78-12-5, 78-12-7, and 78-12-12, means any title to real property, whether valid or not, which has been derived through or is dependent upon any sale, conveyance, or transfer of property in the course of a statutory proceeding for the liquidation of any tax levied against the property whereby the property is relieved from a tax lien.

STATEMENT OF THE CASE

This case involves the question of title to certain real property located in Salt Lake County, Utah. Petitioner claims title as grantee of the Small Business Administration (hereinafter "SBA"), an agency of, and entitled to the full sovereign immunity of, the United States. R.25; 16-19; 71-73.

On January 14, 1981, the SBA acquired record title to the real property in dispute. R.72. At that time, Salt Lake County claimed a lien against the property for unpaid ad valorem taxes. R.72.

Salt Lake County continued to assess taxes on the property and on May 23, 1984, Salt Lake County purported to convey the property by tax deed to Edward Lore at a final May tax sale, while the SBA was still record title holder of the property. The final May tax sale is the culminating step in Utah's statutory scheme of tax lien foreclosure, and is the time when record title is taken from the property owner and granted to the tax purchaser or the county by a tax deed. Edward Lore then purported to convey the property to various other respondents. R.3-4, 17-18, 72-73, 87.

On December 28, 1988, the SBA conveyed all its right, title and interest to the

property to the petitioner, E.D. Shelledy. R.5, 19, 73.

On March 3, 1989, petitioner, as grantee of the SBA, filed suit to quiet title to the property, claiming the 1984 tax deed was void because of the sovereign immunity of the United States, and sought a refund of tax monies he had paid under protest which were assessed against the property by Salt Lake County while the SBA held title to the property. R.2-8, 20-21.

On January 17, 1990, the trial court, ruling on cross-motions for summary judgment by petitioner and Salt Lake County, entered an order granting Salt Lake County's motion and denying petitioner's motion on all issues, quieting title to the property in the tax sale purchaser's successors-in-interest and awarding petitioner a lien on the property for the taxes paid under protest. R.131-132. See, trial court's Order, Appendix p.B1.

On appeal to the Utah Supreme Court, petitioner claimed error in the trial court and asserted ownership of the property as the SBA's grantee. Respondents sought affirmance of the trial court's ruling.

The Utah Supreme Court reversed the trial court in part, holding that the SBA did not simply purchase a right of redemption, as the trial court had ruled, but was the legal title holder to the property at the time of the May, 1984 final tax sale. See, Utah Supreme Court opinion, Appendix pp. A8-A10. However, the Utah Supreme Court further declared that petitioner lacked standing to assert the immunity of the SBA under the theory that he could not raise the constitutional rights of a third party, and that he was therefore barred from attacking the validity of the 1984 tax deed by the short limitations statute of Utah Code Ann. §78-12-5.2 (1953 as amended). This conclusion

was reached in spite of the fact that such limitations period could only have run during the time the SBA held title to the property and prior to its conveyance to Petitioner. See, Utah Supreme Court opinion, Appendix pp. A1-A21.

Thus, federal question jurisdiction and the issues sought to be reviewed have been presented at both the trial and appellate levels in the state courts. Petitioner claimed title to property as grantee of the United States (SBA) as against those claiming under the tax deed petitioner contended was void under the doctrine of sovereign immunity. All issues necessarily arose, in both the trial and appellate courts, out of this basic contention. The Utah trial and appellate courts rejected petitioner's claim to title from the United States and denied the sovereign immunity and related claims.

REASONS FOR GRANTING THE WRIT

The Utah Supreme Court's decision in this case directly impairs the federal government's ability to manage and dispose of its property. The decision conflicts, both directly and in principle, with decisions of this Court on issues which have been well settled for decades, and also conflicts with decisions of the highest courts of other states. The decision further represents a gross and unwarranted use of standing doctrine which, if accepted, creates an unlawful loss of federal property, and opens the door to burdening the federal government in the future with enormous costs and potential losses in the management of its property interests.

I.

THE UTAH SUPREME COURT'S DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS OF THE HIGHEST COURTS OF OTHER STATES.

A. CONFLICT WITH UNITED STATES SUPREME COURT DECISIONS

The Utah Supreme Court's opinion holds that Utah's four-year short statute of limitations, Utah Code Ann. §78-12-5.2 (1953 as amended), bars petitioner's attack on the 1984 tax sale and deed, notwithstanding that the limitations period could only have run during that time which the property was owned by the SBA. The Utah Supreme Court's holding is in direct and irreconcilable conflict with the United States Supreme Court's decision in Gibson v. Chouteau, 13 Wall. [80 U.S.] 92, 20 L.ed. 534 (1871), which, along with other decisions of this Court, established the now well-settled doctrine that state

limitations periods do not run against the federal government or its grantees. The state court in Gibson had held that a limitations period under state adverse possession statutes had cut off the government grantee's rights prior to the grantee receiving legal title to the property from the United States. The state court concluded under a theory of relation that the legal title related back to an earlier date when the grantee may have had a equitable interest in the property and that the limitations period ran during this time of equitable interest prior to conveyance of the legal title by the federal government. This Court reversed, holding that the power of Congress to manage and dispose of federal property is subject to no limitation and that no State legislation may interfere with Congress' right therein nor embarrass its exercise. Gibson v. Chouteau, 13 Wall. [80 U.S.] at 99.

The Gibson Court further addressed the protection afforded the government's grantee:

> The same principle which forbids any State legislation interfering with the power of Congress to dispose of the public property of the United States, also forbids any legislation depriving the grantees of the United States of the possession and enjoyment of the property granted ... . The consummation of the title is not a matter which the grantees can control, but one which rests entirely with the government. With the legal title, when transferred, goes the right to possess and enjoy the land, and it would amount to a denial of the power of disposal in Congress if these benefits, which should

> follow upon the acquisition of that title, could be forfeited because they were not asserted before that title was issued.

Gibson v. Chouteau, 13 Wall. [80 U.S.] at 100 [emphasis added].

Thus, Gibson and other cases have long established that no limitations period may run against the government's grantee except that which may begin and fully run its course after the government conveys legal title to the property to the grantee. Simmons v. Ogle, 105 U.S. 271, 26 L.ed. 1087 (1881) (neither limitations nor equitable doctrine of laches could begin to have effect against anyone until legal title conveyed to purchaser of United States); Oaksmith v. Johnston, 92 U.S. 343, 23 L.ed. 682 (1875) (similar).

Just as the doctrine of relation could not defeat the federal government's rights of disposing of its property in Gibson,

standing arguments cannot do so in this case. Only the express consent of Congress may do so, and none has been cited by any party hereto. The practical result of the Utah Court's holding is that although the limitations period concededly could not run against the SBA, it was, during the period of SBA ownership, running against all prospective purchasers of the property. This conclusion of the Utah Court is unsupported by any legal authority and effectively deprives the federal government of the ability to convey title, which it admittedly has, to its chosen grantee. This clearly abridges the power of Congress to dispose of its federal property without any consent from Congress to do so.

The Utah ruling also conflicts in principle with this Court's holding in United States v. Alabama, 313 U.S. 274, 61 S.Ct. 1011, 85 L.ed. 1327 (1940). In Alabama, it was held that although a local

tax lien was valid, once the property became owned by the United States, the taxing authority was without jurisdiction over the property to foreclose its tax lien and the tax deeds issued were void.

The Utah Supreme Court acknowledges that this case is factually within the ambit of the Alabama decision as of the date of the May, 1984 tax sale. Nevertheless, the Utah Court erroneously concluded that Alabama is not determinative because the SBA did not itself bring the present action. This misstates the law as to the legal effects of, and any need for affirmative responses to, an act which is void, as opposed to merely voidable. See, Point III, infra. The Utah Court states that petitioner lacks standing to attack the 1984 tax deed, and that even though the tax deed was void at the time of the tax sale, once petitioner purchased the property from the SBA, the tax deed was

somehow resurrected and placed beyond attack by a limitations statute which could only have run during the time of the SBA's ownership of the property. Neither authority nor analysis is offered by the Utah Court for this feat of legal legerdemain. The doctrine of standing is simply invoked and a result declared.

The effect of the Utah ruling is to eviscerate the authority of the Alabama decision, as it implies that the rule under Alabama cannot benefit the federal government's grantees and renders any property in like circumstances valueless to the federal government unless the government itself brings judicial action to remove the cloud on its title created by the void acts of a taxing authority which lacked jurisdiction over the property. Congress has not consented to the imposition of such a burden on the federal government, and petitioner asserts that,

absent such consent, the State of Utah may not reach such a result.

B. CONFLICT WITH OTHER STATE COURTS' DECISIONS

The Utah Supreme Court's decision also is in conflict, directly and in principle, with decisions of the highest courts of other states. On facts virtually identical to those here, the Florida Supreme Court in Daniell v. Sherrill, 48 So.2d 736 (Fla.1950) held that any purchaser of property from the United States could raise the immunity issue to contest the validity of tax deeds issued on property owned by the United States. Id. at 739. This determination conforms to the generally accepted rule that a litigant may challenge the validity of a tax deed if he or those under whom he claims had title or other cognizable interest in the property at the time of the tax sale. Preston v. Iron County, 105 Wis. 2d 346, 314 N.W.2d 131

(1981) (vendee under unrecorded land contract had standing to challenge tax deeds); Hopper v. Chandler, 183 Ark. 469, 36 S. W.2d 398 (1931) (those under whom litigant holds must have had interest at time of tax sale in order to challenge it); Smith v. Whitney, 105 Mont. 523, 74 P.2d 450 (1937) (similar); Gee v. Bullock, 349 Mo. 1154, 164 S.W.2d 281 (1942) (similar); Morcom v. Brunner, 30 Wash.App. 532, 635 P.2d 778 (Wash. App. 1981) (privity with predecessor in title gives successor same rights to challenge tax title that predecessor had).

In these cited cases, when grantees acquired title to property by conveyance, they were allowed to challenge clouds to their title which arose during the time of ownership of their grantor. To hold, as the Utah Supreme Court has done, that a grantee lacks standing to assert claims of a grantor who has conveyed all its right,

title and interest to the grantee eviscerates concepts of privity which are at the foundations of property rights developed from the earliest days of the English common law and adopted in our Constitution.

II.

THE UTAH COURT'S DENIAL OF STANDING OF PETITIONER IS ERROR AND BEYOND ANY PERMISSIBLE INTERPRETATION OF STANDING DOCTRINE

A. NO STANDING ISSUE EXISTS UNDER THE FACTS OF THIS CASE.

Standing is not a valid issue in this case. Petitioner seeks merely to establish his chain of title to the property in dispute by a quiet title action. The fact that his predecessor in interest was the SBA is a historical and irrefutable fact of petitioner's chain of title, and the legal effects of the SBA's period of ownership cannot be ignored or denied under some ill-

conceived standing argument.

Standing doctrine arises out of concepts of justiciability under the cases and controversies section of the Federal Constitution. The essence of standing doctrine is whether the litigant has a personal stake in the issue presented. Warth v. Seldin, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed. 2d 343 (1975). Petitioner paid valuable consideration to the SBA to acquire title to the disputed property. His claim to that title is at stake. In an action to quiet title, it is difficult to imagine anyone with a more personal stake in the issue presented than a purchaser of the property. Moreover, as indicated above, the generally accepted rule is that a grantee's privity with his grantor supplies the basis for standing to raise claims against a tax deed or sale made during the grantor's ownership of the property. Daniel v. Sherrill, 48 So.2d 736

(Fla. 1950); Gee v. Bullock, 349 Mo. 1154; 164 S.W.2d 281 (1942); Preston v. Iron County, 105 Wis.2d 3436, 314 N.W.2d 131 (1981); Hopper v. Chandler, 183 Ark. 469, 36 S.W.2d 398 (1931), Smith v. Whitney, 105 Mont. 523, 74 P.2d 450 (1937).

In holding that petitioner lacked standing, the Utah Supreme Court reasoned that petitioner is attempting to assert for himself the constitutional rights of a third party (the SBA). Petitioner believes the bar to asserting third-party rights is simply not applicable under the facts of this case. Petitioner does not claim any sovereign immunity for himself because of his relationship with the federal government, as was the case in Northside Canal Co. v. State Board of Equalization, 8 F.2d 739 (D.C. Wyo. 1925). He merely is stating a material fact in his chain of title, that of the ownership of the property by the SBA at the time of the

purported tax sale, and the legal effect of that fact.

B. KEMMERER COAL CASE IS FLAWED AND CANNOT BE CONTROLLING HERE.

In reaching its decision, the Utah Supreme Court relies on the case of Kemmerer Coal Co. v. BYU, 723 F.2d 54 (10th Cir. 1983), in which the Tenth Circuit panel purported to apply Utah law to a tax deed challenge. In Kemmerer, the Tenth Circuit was presented with a claim of invalidity of a tax deed brought more than twenty years after the issuance of the tax deed and more than thirty years after the assessments which were claimed to violate due process by the plaintiffs, successors-in-interest to the titleholders at the time of the tax proceedings. The Tenth Circuit panel faced the difficult issue of whether it is constitutionally permissible for a limitations statute to bar claims based on alleged violations of federal due process

rights. The panel avoided this issue by holding that the plaintiff lacked standing to assert the rights of its predecessor-in-interest and that "under the facts of this case...we do not believe it fundamentally unfair to apply the statute of limitations to Kemmerer... ." Id. at 57-58. Thus, by using a standing doctrine argument, the Tenth Circuit in effect decided, without expressly saying so, that under the unusual facts of Kemmerer, it was constitutionally permissible to cut off a due process claim.

The Utah Court has failed to address the impact of the factual distinctions between this case and Kemmerer, primarily that of the ownership of the property by the federal government (Kemmerer involved only private parties), and the absence in this case of any time period during which a limitations period could run (the SBA owned the property until December, 1988).

The Kemmerer court was viewing a fact situation in which the taxing authority could pass good title if all statutory steps were followed. See, Hansen v. Morris, 3 Utah 2d 310, 315, 283 P.2d 884, 887 (1955) and discussion in Point III, infra. In this case, under the authority of the United States v. Alabama decision, the taxing authority lacked jurisdiction over the property because of the ownership of the SBA and therefore could not pass good title even if all statutory steps were followed. And since no limitations could run against the SBA, limitations could not cut off petitioner's claim in the three months between his acquisition of title from the SBA and the filing of the quiet title action.

As seen above, and below in sub-point C, use of standing doctrine to bar claims of parties in privity with their predecessors in interest is an extreme

minority viewpoint. Such a use of standing doctrine runs counter to centuries-old principles of privity which underlie our concepts of property rights and is fundamentally flawed when applied to the facts of this case. It may not be used to impair the federal government's rights in disposing of its property or the government grantee's rights to receive title to that property.

C. PETITIONER FALLS WITHIN THE JUS TERTII EXCEPTIONS TO THIRD-PARTY STANDING DOCTRINE.

Even if third-party standing issues are addressed, the Utah Supreme Court's conclusion that petitioner does not fall within the so-called jus tertii exceptions to the rule is simply erroneous.

One or more of the following three factors are generally present when this Court allows a party to assert the constitutional rights of a third party:

"first, the presence of some substantial relationship between the claimant and the third parties; second, the impossibility of the rightholders asserting their own constitutional rights; and third, the need to avoid a dilution of third parties' constitutional rights that would result were the assertion of jus tertii not permitted." Note, Standing to Assert Constitutional Jus Tertii, 88 Harv. L.Rev. 423, 425 (1975).

The Utah Supreme Court's opinion cavalierly pronounces that "[n]one of the above are present in the instant case." Appendix, p.A15. This conclusion is plain error. An examination of the facts reveals that each factor is present in this case and supports petitioner's standing to challenge the tax deed.

1. Presence of Substantial Relationship.

There is the requisite "substantial relationship" between petitioner and the SBA to satisfy the first jus tertii factor. Petitioner paid valuable consideration to the SBA to acquire all its right, title and interest in the property and the SBA assumed it conveyed all its interest to petitioner. A more substantial relationship can hardly be imagined. A large sub-class of "special relationship" jus tertii cases involve vendor-vendee status, e.g., Barrows v. Jackson, 346 U.S. 249 (1953); Craig v. Boren, 429 U.S. 190 (1976); Eisenstadt v. Baird, 405 U.S. 438 (1972). It has been suggested that such cases are actually first party rights cases seeking to protect the litigant against economic injury resulting from unjustified discrimination against those with whom he sought to interact. Standing was granted in each case. Monaghan, Third Party Standing, 84 Colum. L.Rev. 277 (1984) at

282,297, 299. It should be noted that these "first-party rights" cases involved anticipated economic relations, whereas the instant case involves an existing, accomplished economic relation--the petitioner has purchased the property from the SBA. Thus, petitioner's relationship is even more substantial than others which have been held to fall within the jus tertii exception.

2. Impossibility of SBA to Assert Its Rights.

It is impossible for the SBA to assert its own constitutional rights to manage and dispose of its property.

The SBA conveyed all its right, title and interest in the property to petitioner and it is likely the SBA itself lacks standing to be a party to this quiet title action, thus leaving its grantee, the petitioner, as the only one able to assert its rights to alienate its property.

3. SBA's Rights Diluted.

If assertion of jus tertii were not permitted here, the SBA's rights would be diluted. The Utah court's ruling either renders the SBA's property valueless to its grantees, or burdens the government with the need to litigate the title prior to conveying the property. Congress has not consented to the imposition of such a burden.

III.

A TAX DEED WHICH IS VOID FOR LACK OF JURISDICTION CANNOT SERVE AS ROOT OF GOOD TITLE TO DEPRIVE THE GOVERNMENT'S GRANTEE OF TITLE

Under the holding of United States v. Alabama, 313 U.S. 274, 61 S.Ct. 1011, 85 L.Ed. 1327 (1940), the 1984 tax deed from Salt Lake County was void because the county lacked jurisdiction over the property to foreclose their lien.

Although Utah Code Ann. §78-12-5.3 defined a tax title as meaning "any title to real property, whether valid or not," and Section 78-12-5.2 barred actions against a tax title after four years from the date of the tax sale, the Utah Supreme Court has in previous cases acknowledged that the language of these statutes is not without limitation. It has recognized that, despite its broad language, certain applications might be beyond the limits of statutory intent or constitutional permissibility. See, Frederiksen v. Lafleur, 632 P.2d 827, 831 n.14 (Utah 1981). The Utah Supreme Court has stated that the statutes only applied where such tax deeds were "executed by the same authority that could have passed good title if each and every statutory step in perfecting a tax title had been followed, without the aid of a limitations statute." Hansen v. Morris, 3 Utah 2d 310, 315, 283

P.2d 884, 887 (1955).

It is well-settled property law that a void deed is a nullity, having no legal effect and invalid in law for any purpose whatsoever. This contrasts with a deed which is merely voidable, requiring an affirmative act to set it aside. A void deed may be attacked collaterally by anyone whose interest is adversely affected by it. Argyle v. Slemaker, 99 Idaho 544, 585 P.2d 954 (1978); Gulf Land & Development Co. v. McRaney, 197 So.2d 212 (Miss. 1967); see generally, 23 AmJur2d Deeds §188 (1978), 26 CJS Deeds §69 (1956). Where the taxing authority lacks jurisdiction to foreclose its tax lien because of ownership by the federal government, the void deed cannot be root of any title which may spring forth after the passage of time. Support, Redfield v. Parks, 132 U.S. 239, 33 L.ed. 327 (1889) (deed void on its face could not support limitations claim under adverse

possession); Brooks v. Marbury, 11 Wheat. [24 U.S.] 78, 87-88, 6 L.Ed. 423, 426 (1826) (uncontroverted that deeds which are absolutely void cannot be the foundation of title); Baxter v. Utah Department of Transportation, 783 P.2d 1045 (Ut. App. 1989); see also, P. Lear, Utah's Short Statutes of Limitations for Tax Titles: The Continuing Specter of Lyman v. National Mortgage Bond Corp.--A Need for Remedial Legislation, 76 BYU L.Rev. 457, 467 (1976) (limitations do not run in favor of a deed which is void because of a jurisdictional defect).

Thus, where, as here, a tax deed is void because the county lacked jurisdiction over the property to enforce its tax lien (and, thus, could not have passed good title if statutory steps were followed), the limitations statute cannot apply to "resurrect" good title. The Utah Supreme Court erred in reaching such a result.

IV.

THE UTAH COURT'S DECISION PLACES AN IMPERMISSIBLE BURDEN ON THE FEDERAL GOVERNMENT AND MAY LEAD TO UNLAWFUL LOSS OF FEDERAL ASSETS

It is clear that the decision of the Utah Supreme Court in this case leaves the federal government holding assets which are either valueless to their grantees or over which the government must litigate the issue of title itself. Either circumstance results in a potentially serious drain on federal resources, and infringes on Congress' rights to dispose of federal property.

In this case, Salt Lake County knew the SBA became the owner of the property in 1981. It ignored the SBA's ownership and continued to assess the property throughout the time of federal ownership. It purported to sell the property at a tax sale which is admittedly void under the

authority of this Court's decision in United States v. Alabama. The SBA then transferred the property to petitioner who immediately filed suit to remove this cloud from his title. But the Utah court now has held that when the SBA transferred the property to petitioner, the property's title miraculously reverted back to those claiming under the void tax deed.

The Utah Court says the SBA could have avoided the tax deed but chose not to do so, clearly misunderstanding the distinction between a deed which is void and one which is merely voidable. Thus, the federal government has been deprived of its right to alienate its property, a deprivation to which Congress has not consented and which is in direct conflict with the law as stated by this Court in Alabama and Gibson. It is appropriate for this Court to correct the Utah Court, and reaffirm the federal government's absolute

authority in managing and disposing of its property interests, as well as the grantee's right to the enjoyment of the property conveyed by the federal government.

CONCLUSION

For the foregoing reasons, petitioner requests that a Writ of Certiorari issue in this case for review of the decision of the Utah Supreme Court.

DATED October 16, 1992.

Respectfully submitted,

ERIC P. HARTMAN
Counsel of Record

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF UTAH

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E. D. Shelledy,
Plaintiff and Appellant,

v.

Edward Lore, Alan Parsons, Erin Parsons, Roy Hockin, Harry Deckered, Kent C. Bangerter, Lloyd V. McBride, David C. Kunz, and Susan S. Kunz, individuals, Merit Distributing Inc., a Utah corporation, State Tax Commission of the State of Utah, Salt Lake County, and John Does I-X,
Defendants and Appellees.

No. 900074

FILED
April 14, 1992

Geoffrey J. Butler
Clerk

Third District, Salt Lake County
The Honorable James S. Sawaya

Attorneys: Eric P. Hartman, Salt Lake City, for Shelledy
R. Paul Van Dam, Salt Lake City, for Tax Commission
Mary Ellen Sloan, Salt Lake City, for Salt Lake County
Robert C. Liljenquist, Murray, for Deckered, Hockin, Bangerter, Kunz, McBride, Parsons, Merit Distributing

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HOWE, Associate Chief Justice:

Plaintiff E. D. Shelledy brought this action to quiet title to real property in Salt Lake County which he purchased from the Small Business Administration (SBA), a federal agency. All defendants except the State Tax Commission and Salt Lake County (hereinafter "defendants") claim title to the property under a tax deed issued by Salt Lake County at the May 1984 tax sale. The trial court granted summary judgment in favor of defendants, and plaintiff brings this appeal. We are called upon to determine whether Utah Code Ann. §78-12-5.2, which provides a four-year limitation on suits against holders of tax deeds, bars plaintiff's suit.

In 1978, Clare and Virginia Pearson, then owners of the subject property, failed to pay the general property taxes for that year. As a result, the property was sold

to Salt Lake County at the preliminary tax sale on January 15, 1979, pursuant to Utah Code Ann. §59-10-33 (current version at §59-2-1336 (Supp. 1991)). That preliminary sale triggered a four-year redemption period during which any person with an interest in that property could redeem the property by paying into the county treasury the amount due the county, all taxes subsequently assessed and all interest, penalty, and costs that have accrued. Utah Code Ann. §59-10-56 (current version at §59-2-1346 (Supp. 1991)).

In January, 1981, two years after the preliminary sale, the Pearsons conveyed their interest in the property by quitclaim deed to the SBA. Neither the Pearsons nor the SBA paid the delinquent taxes at that time. Notwithstanding the tax-exempt status of the SBA, Salt Lake County continued to levy taxes against the

property for the 1981, 1982, and 1983 tax years.

By May 1984, the redemption period had run and the delinquent taxes had not been paid. Consequently, the County conveyed the property by tax deed at the final May tax sale to defendant Edward Lore for $6,958.38.[1] This amount represented delinquent property taxes for 1978, 1980, 1981, 1982, and 1983, as well as the interest, penalties, and costs which had accrued during those years. Subsequently, Lore conveyed an undivided interest to each

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[1]Property "held by the county under preliminary tax sale" is sold at the final May sale "following the lapse of four years from the date of the preliminary sale." Utah Code Ann. §59-10-56 (current version at §59-2-1346 (Supp. 1991)). Here, the preliminary sale occurred in January 1979; therefore, the property apparently should have been sold at the 1983 final May tax sale rather than at the 1984 tax sale. The facts are unclear as to the reason for this delay.

of the other defendants. These new owners failed to pay the 1984 property taxes, and on January 15, 1985, the tract was again sold to the County at the preliminary tax sale and another four-year redemption period began to run.

In December, 1988, nearly five years after the May 1984 tax sale, SBA conveyed its interest in the property to Shelledy. Three months later, Shelledy brought this action in the district court below to quiet title to the property against defendants who claimed title under the 1984 tax deed. By this date, the second redemption period had run and final sale of the property was pending at the May 1989 tax sale. To redeem the property, Shelledy paid under protest $6,007.39 into the county treasury. This sum represented the property taxes, interest, penalties, and costs owing for

1984, 1985, 1986, 1987, and 1988 which defendants had failed to pay.

Both plaintiff and defendant Salt Lake County filed motions for summary judgment. Plaintiff contended that while the tax liens for 1978 and 1980 remained valid after the SBA acquired the property in 1981, the sovereign immunity status of that agency barred the County from enforcing the liens and making future assessment of taxes against the property. Therefore, plaintiff argued, the 1984 tax sale was void. Shelledy urged the trial court to quiet title in his favor and award him the $6,007.39 he had paid under protest in 1989, less the amount of delinquent taxes owing on January 17, 1981, the date the SBA acquired title from the Pearsons.

On the other hand, Salt Lake County

contended that the SBA did not acquire title from the Pearsons, but only the right to redeem the property. It argued that this right was extinguished when the SBA failed to redeem within four years after the 1979 preliminary sale and, therefore, that the County had the right to sell the property at the May 1984 tax sale. In addition, it asserted that Shelledy's suit was barred by the four-year statute of limitation for challenging tax deeds, Utah Code Ann. §78-12-5.2,[2] and that Shelledy lacked standing to assert the immunity from

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[2]In pertinent part, section 78-12-5.2 reads:

> No action or defense for the recovery or possession of real property or to quiet title or determine the ownership thereof shall be commenced or interposed against the holder of a tax title after the expiration of four years from the date of the sale, conveyance or transfer of such tax title to any county, or directly to any other purchase thereof at any public or private tax sale and after the expiration of one year from the date of this act.

taxation enjoyed by the SBA.

The trial court granted the County's motion for summary judgment for the above reasons advanced by the County. However, the court granted Shelledy a lien against the property for the $6,007.39 he paid under protest. Shelledy appeals from that judgment.[3] Because he appeals from a grant of summary judgment, we view the facts in a light most favorable to him and review the legal conclusion of the trial court for correctness, affording it no deference. Blue Cross and Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989).

At the outset, it should be observed that we have held that following the preliminary tax sale, the property owner, although he is delinquent in his real

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[3]On appeal, Salt Lake County is the only defendant to submit a brief. Six defendants whose title to the property was contingent upon the validity of the May 1984 tax sale joined the County's brief, claiming that it set forth all the arguments they had planned to raise.

estate taxes, maintains the underlying ownership interest in the property. Salt Lake Home Builders, Inc. v. Colman, 30 Utah 2d 379, 382-83, 518 P.2d 165, 167 (1974). Therefore, the quitclaim deed from the Pearsons to the SBA vested in the SBA fee simple title. Moreover, Utah Code Ann. §59-10-64(6) (current version at §59-2-1351(7) (Supp. 1991)) indicates that fee simple title to the property does not vest in the county unless it purchases it at the May tax sale. As to property which is listed for sale but not purchased by a private party at the final tax sale, the statute provides:

> The county auditor shall thereupon make an endorsement opposite each of the entries in the tax sale record ...

> substantially as follows: "The fee simple title to the property described in this entry was on the _____ day of May, 19__, sold and conveyed to the county of ___ _____ in payment of general taxes charged against the same," and shall sign his name thereto. The fee simple title to said property shall thereupon vest in the county.

(Emphasis added.) Thus title remains in the record owner following the preliminary sale; otherwise, there would be nothing to vest in the county after the May tax sale. See Salt Lake Home Builders, 30 Utah 2d at 382, 518 P.2d at 167. The trial court erred in concluding otherwise, but that error does not affect its decision.

The SBA is a federal agency entitled to the "full sovereign immunity of the

United States." United States v. Mel's Lockers, Inc., 346 F.2d 168, 169 (10th Cir. 1965). In support of Shelledy's contention that this immunity barred the County's attempt to enforce the prior tax lien for 1978, he relies on the United States Supreme Court decision of United States v. Alabama, 313 U.S. 274, 61 S. Ct. 1011, 85 L.Ed. 1327 (1941), a factually similar case. The United States brought suit to quiet title against Alabama, seeking a "decree declaring the liens, tax sales and certificates of purchase to be invalid and enjoining the State from asserting its claims." 313 U.S. at 277, 61 S.Ct. at 1012, 85 L.Ed. at 1330. The United States contended that it was entitled to this relief by virtue of its sovereign immunity. 313 U.S. at 279, 61 S.Ct. at 1013, 85 L.Ed. at 1331.

The Court determined that the liens

were valid, finding "no reason why the United States ... should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands ... who take conveyances on and after the specified tax date." 313 U.S. at 282, 61 S.Ct. at 1014, 85 L.Ed. at 1332. The Court went on to hold, however, that the sovereign immunity of the United States barred the county's attempt to enforce the prior liens by tax sale. The Court reasoned:

> With respect to the tax sales the case has a different aspect. The proceedings in the county court for the sale of the lands were taken and the decrees were rendered after the United States had become the owner of the tracts. A proceeding against property in which the United

> States has an interest is a suit against the United States ... and in the absence of its consent to the prosecution of such proceedings, the county court was without jurisdiction and its decrees, the tax sales and the certificates of purchase issued to the State were void.

313 U.S. at 282, 61 S.Ct. at 1014, 85 L.Ed. at 1332-33 (citation omitted). Thus, the Court held that while the acquisition of property by a sovereign entity did not destroy the validity of a prior lien, it rendered the lien unenforceable absent the consent of the sovereign entity.

Alabama, however, is not dispositive here. The SBA is not a party to this action because it no longer has an interest in the property. The SBA may have been able to avoid the 1984 tax sale of its

property on the authority of Alabama, but it did not attempt to do so.

Plaintiff now contends that he has standing to assert the SBA's immunity from taxation and thereby prevent the four-year statute of limitations contained in section 78-12-5.2 from running against him. As a general rule, courts do not permit a party to assert the constitutional rights of a third party. Barrows v. Jackson, 346 U.S. 249, 255, 73 S.Ct. 1031, 1034, 97 L.Ed. 2d 1586, 1594 (1953); State v. Harding, 576 P.2d 1284, 1285 (Utah 1978); Kemmerer Coal Co. v. Brigham Young University, 723 F.2d 54 (10th Cir. 1983). The general rule is that a litigant "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interest of third parties." Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed. 2d 343, 355 (1975)

(citations omitted). However, a party may assert the constitutional rights of a third party if certain factors are met: "first, the presence of some substantial relationship between the claimant and the third parties; second, the impossibility of the rightholders asserting their own constitutional rights; and third, the need to avoid a dilution of third parties' constitutional rights that would result were the assertion of jus tertii not permitted." Note, Standing to Assert Constitutional Jus Tertii, 88 Harv. L. Rev. 423, 425 (1975). See generally Henry P. Monaghan, Third Party Standing 84 Colum. L.Rev. 277 (1984); Lawrence H. Tribe, American Constitutional Law §3-19 (2d ed. 1988).

None of the above are present in the instant case. No substantial relationship exists between Shelledy and the SBA; the

SBA has never been precluded from asserting its immune status; and finally, there has been no dilution of Shelledy's constitutional rights.

In Frederiksen v. LaFleur, 632 P.2d 827, 831 (Utah 1981), we held that "tax purchasers may avail themselves of the special statute of limitation regardless of either the invalidity of their tax title or their inability to establish an affirmative claim to title apart from their tax title." We expressly reserved voicing any opinion "on whether the special statute of limitations could protect a tax title acquired by means repugnant to fundamental fairness or whether such an application of the statute would exceed the limits of statutory intent or constitutional permissibility." Id. at 831 n.14. Later, the United States Court of Appeals for the Tenth Circuit in Kemmerer Coal, 723 F.2d at

57, held that under Utah law the four-year statute of limitation barred an attack on a tax deed held by Brigham Young University. Kemmerer Coal Co., which had succeeded to the interest of San Rafael Fuel Co., attacked the tax deed because of the lack of notice of the tax assessment to the owner, San Rafael. There, the court wrote:

> We need not decide whether the analysis in [Saranac Land & Timber Co. v. Roberts, 177 U.S. 318, 329-31, 20 S.Ct. 642, 647, 44 L.Ed. 786, 792-93 (1900)] would survive current constitutional jurisprudence, however, because Kemmerer itself has suffered no due process injury. If a constitutional violation occurred, it was the taking of San Rafael's property wihtout due process. Kemmerer

thus seeks to advance its claim by asserting a third-party's constitutional rights... .

We believe the Utah Supreme Court would hold that Kemmerer has no standing to assert a third-party's constitutional rights under the facts of this case. While it may have been "repugnant to fundamental fairness," Frederiksen, 632 P.2d at 831 n.14, to deprive San Rafael of its property without proper notice, we do not believe it fundamentally unfair to apply the statute of limitations to Kemmerer who bought the coal lands in the face of record notice of a rival claim to "underground rights."

Id. at 57-58 (citations omitted). The

Tenth Circuit made an accurate forecast.

When Shelledy purchased the property from the SBA in 1988, he was on record notice of defendants' rival claim to the property by virtue of the 1984 tax deed. Therefore, we hold that Shelledy lacks standing to assert the SBA's constitutional rights and defense.

Our statutory definition of "tax title" is, in relevant part:

> "[T]ax title"...means any title to real property, whether valid or not, which has been derived through or is dependent upon any sale, conveyance, or transfer of property in the course of a statutory proceeding for the liquidation of any tax levied against the property whereby the property is relieved from a tax lien.

Utah Code Ann. §78-12-5.3 (emphasis added). To give full effect to the above statute, it makes no difference if the tax title is valid. Once the four-year statute of limitation has run, the tax title cannot be attacked. Such interpretation is entirely consistent with our decision in Frederiksen. As we stated in that case, the reason for this statute of limitation on tax deeds is "to give increased stability to tax titles and thereby augment the revenues of state and local governments ... ." 632 P.2d at 828. We see no reason to depart from our precedent.

Because Shelledy paid under protest the $6,007.39 in delinquent taxes, interest, and penalties owing on the property as of March 1989 and thereby redeemed the property for defendants, Shelledy is entitled to a lien on the property for that amount plus interest.

The judgment of the trial court is affirmed.

WE CONCUR:

Gordon R. Hall Chief Justice	I. Daniel Stewart Justice
Christine M. Durham Justice	Michael D. Zimmerman Justice

APPENDIX B

ERIC P. HARTMAN, No. 1400
Attorney for Plaintiff
2120 South 1300 East, Suite 301
Salt Lake City, UT 84106
(801) 486-3751

IN THE DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH

E. D. SHELLEDY, Plaintiff, vs. EDWARD LORE, ALAN PARSONS, ERIN PARSONS, ROY HOCKIN, HARRY DECKERED, KENT C. BANGERTER, LLOYD V. McBRIDE, DAVID C. KUNZ, SUSAN S. KUNZ, individual, MERIT DISTRIBUTING INC., a Utah corporation, STATE TAX COMMISSION OF THE STATE OF UTAH, SALT LAKE COUNTY, and JOHN DOES I-X, Defendants.	)	O R D E R Civil No. 890901388 PR Judge James Sawaya

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Plaintiff E. D. Shelledy's and defendant Salt Lake County's Cross-Motions for Summary Judgment came on regularly for

hearing on December 18, 1989, in the Third Judicial District Court in and for Salt Lake County, the Honorable James S. Sawaya presiding. Plaintiff was represented by his counsel, Eric P. Hartman. Salt Lake County was represented by Deputy County Attorney Mary Ellen Sloan. Counsel for various other defendants, Robert Liljenquist, was present but did not argue.

The court, following argument and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Salt Lake County's Motion for Summary Judgment is granted on all issues on the bases and for the reasons stated in its memoranda; and plaintiff's Motion for Summary Judgment is denied on all issues.

2. Salt Lake County's May 1984 tax sale was valid and title to the property in dispute is quieted in the tax sale purchaser or his successors in interest.

3. The property was subject to taxation by Salt Lake County during all times relevant herein.

4. Plaintiff is entitled to a statutory lien against the property for any tax payments made on the property.

5. The court's ruling resolves all issues between all parties herein, or alternatively, the court, finding no just reason for delay, directs entry of judgment on the above claims and certifies this Order as final for purposes of appeal pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

DATED January 17, 1990.

BY THE COURT:

JAMES S. SAWAYA
Third District Judge

APPROVED AS TO FORM: APPROVED AS TO FORM:

MARY ELLEN SLOAN
Deputy County
Attorney

ROBERT LILJENQUIST
Attorney at Law

MAILING CERTIFICATE

I certify that on January ___, 1990, I mailed a copy of the foregoing Order, U.S. mail, postage prepaid, to the following:

Edward Lore, defendant
440 North 800 East
Kaysville, UT 84037

Mary Ellen Sloan
Salt Lake County Attorney's Office
2001 South State Street, #S3600
Salt Lake City, UT 84190-1200

Robert C. Liljenquist
DAY & BARNEY
Attorney for defendants,
Alan Parsons, Eric Parsons,
Roy Hockin, Lloyd V. McBride,
David C. Kunz, and Merit
Distributing, Inc.
45 East Vine Street
Murray, UT 84107

APPENDIX C

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

JULY 21, 1992

OFFICE OF THE CLERK

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Salt Lake City, UT 84106

E. D. Shelledy,
Plaintiff and Appellant,

v.

Supreme No. 900074
District No. 890901388

Edward Lore, Alan Parsons, Erin Parsons, Roy Hockin, Harry Deckered, Kent C. Bangerter, Lloyd McBride, et al.
Defendant and Appellee.

THIS DAY, Petition for Rehearing having been heretofore considered, and the Court being sufficiently advised in the premises, it is ordered that a rehearing be, and the same is, denied.

Geoffrey J. Butler
Clerk